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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/759,360	01/16/2004	Peter Visconti	029714 . 00027	9925
79439	7590	10/13/2009		
Arent Fox LLP and Cardinal Health, Inc. 1050 Connecticut Ave., N.W. Suite 400 Washington, DC 20036		EXAMINER		
		MOULTON, ELIZABETH ROSE		
		ART UNIT	PAPER NUMBER	
		3767		
NOTIFICATION DATE		DELIVERY MODE		
10/13/2009		ELECTRONIC		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

DCIPDocket@arentfox.com  
Patent\_Mail@arentfox.com  
IPMatters@arentfox.com

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/759,360	VISCONTI ET AL.
	<b>Examiner</b> ELIZABETH R. MOULTON	<b>Art Unit</b> 3767

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If no period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED. (35 U.S.C. § 133).

Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### **Status**

1) Responsive to communication(s) filed on 02 July 2009.

2a) This action is FINAL.      2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### **Disposition of Claims**

4) Claim(s) 10-13 and 16-28 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 10-13 and 16-28 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### **Application Papers**

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### **Priority under 35 U.S.C. § 119**

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All    b) Some \* c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### **Attachment(s)**

1) Notice of References Cited (PTO-892)

2) Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) Information Disclosure Statement(s) (PTO/06/08)  
Paper No(s)/Mail Date \_\_\_\_\_

4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_

5) Notice of Informal Patent Application

6) Other: \_\_\_\_\_

### **DETAILED ACTION**

#### ***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 10-13, 17-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hood (US 5,261,883)

Hood teaches a cartridge cassette for use with a pump (Fig 1, 2, 6, 7) the cassette comprising:

A pumping chamber (80) with fluid communication with a source of fluid (14) and an irrigation conduit (12), the pumping chamber being defined in part by a diaphragm (74) positioned to cooperate with a reciprocating pumping actuator (drive pressure via 20); means for removably connecting the cartridge to the irrigation pump (connector 66,64); an upstream valve (86); a downstream valve (92); wherein the upstream and downstream valves are parallel (Fig 6 and 7) and the diaphragm is disposed intermediate the valves and the connecting means (Fig 2).

Hood teaches the connecting means in Fig 2 and 6, and the diaphragm with parallel valves in Fig 7. It would have been obvious to one of ordinary skill in the art at the time the invention was made to use the parallel valve-diaphragm arrangement of Fig 7 with the connecting means of Fig 2 as a matter of simple substitution of known elements in

the same field of endeavor for the same purpose. See tubing Fig 1. See threads on connectors 64/66 which are considered tabs and grooves. The inlet and outlet valves of Fig 7 both directly oppose the bottom surface of the diaphragm. Fluid exits/enters the valves from that bottom of the diaphragm.

3. Claims 16, 23-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hood as applied to claims above, and further in view of Minick (US 5,462,256). Hood does not teach a diaphragm with a graduated cross-section. Minick teaches a pump cartridge with a graduated cross section diaphragm (Fig 3, 17). It would have been obvious to one ordinary skill in the art at the time the invention was made to use a graduated cross section since it has been held that improving similar devices in the same way is within the skill of an ordinary worker in the art.

#### ***Response to Arguments***

4. Applicant's arguments with respect to claims 10-13, 16-28 have been considered but are not persuasive. Applicant argues that the inlet valve of Fig 7 does not "directly oppose" the diaphragm. The outlet of the valve outputs fluid directly to the bottom surface of the diaphragm. The inlet valve allows fluid to enter directly from the bottom surface of the diaphragm. As suggested in the brief telephone conversation between the examiner and the attorney, the examiner notes that the valves of Hood are not on a common side of the cartridge cassette.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ELIZABETH R. MOULTON whose telephone number is (571)272-9970. The examiner can normally be reached on 7:00-3:30 M-Th.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Sirmons can be reached on (571) 272-4965. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/ELIZABETH R MOULTON/

Examiner, Art Unit 3767

/Kevin C. Sirmons/

Supervisory Patent Examiner, Art Unit 3767